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Senate Bill 1088, An Act Providing Local Jurisdiction for Victims of Tortious Conduct
Judiciary Committee
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Senator McDonald, Representative Lawlor and members of Judiciary Committee, thank you for the opportunity to comment in **support** of Senate Bill 1088, An Act Providing Local Jurisdiction for Victims of Tortious Conduct. My name is Houston Putnam Lowry¹. I serve on the Executive Committee of International Law & Practice Section of the Connecticut Bar Association. The section supports enactment of this statute because it will correct a number of injustices.

Senate Bill 1044 closely tracks the federal Alien Tort Claims Act,² which was enacted as part of the Judicature Act of 1789. This bill allows all people, not just aliens, a right of recovery. It is inappropriate to allow only aliens access to the courts under these circumstances.

The original Alien Tort Claims Act arose out of the inability of the Continental Congress to deal with violations of the Law of Nations. The Continental Congress passed a resolution calling upon the states to "provide expeditious, exemplary, and adequate punishment" for "the violation of safe conducts or passports, . . . of hostility against such as are in amity, . . . with the United States, . . . infractions of the immunities of ambassadors and other public ministers . . . [and] "infractions of treaties and conventions to which the United States are a party." 21 Journals of the Continental Congress 1136-1137 (G. Hunt ed. 1912).

The problem was exacerbated by a subsequent assault upon the Secretary of the French Legation in Philadelphia.³ Of all of the original states, only Connecticut passed such a statute.⁴

¹ A member of Brown & Welsh, P.C.

² 28 USC §1350. Alien's action for tort. The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. The predecessor of the statute was originally enacted at 1 Stat. 79 (1789).

³ See *Respublica v. De Longchamps*, 1 Dall. 111, 1 U.S. 111, 1 L. Ed. 59 (O. T. Phila. 1784).

⁴ First Laws of the State of Connecticut 82, 83 (J. Cushing ed. 1982) (1784 compilation; exact date of Act unknown).

The Alien Tort Claims Act has a significant connection with Connecticut because it was drafted by a Connecticut native, Oliver Ellsworth.⁵ The original draft of the federal bill is in his handwriting in the National Archives, Casto, Law of Nations 498. *See generally* W. Brown, *The Life of Oliver Ellsworth* (1905), cited in *Sosa v. Alvarez-Machain et al.*, 124 S. Ct. 2739; 159 L. Ed. 2d 718 (June 29, 2004).

According to Blackstone, originally there were only three such torts addressed by the criminal law of England:

1. violation of safe conducts;
2. infringement of the rights of ambassadors; and
3. piracy.
- 4 Blackstone's Commentaries 68

Violations of safe conducts, infringement of the rights of ambassadors and piracy can involve anyone. New cases interpreting the Federal Alien Tort Claims make it clear torture would be covered under this statute. Since anyone can be tortured, anyone should be allowed to recover for being tortured.

This act requires such actions to have some relationship to Connecticut before a Connecticut court may exercise its jurisdiction. The permissible connections are:

1. One or more plaintiff resides in the State of Connecticut; or
2. One or more defendant resides in the State of Connecticut; or
3. The harm was felt within the State of Connecticut; or
4. One or more defendant was personally served within the State of Connecticut; or
5. The act in question took place within the State of Connecticut; or
6. International law confers universal jurisdiction to adjudicate the act in question;
or
7. One or more defendant owns property located within the State of Connecticut.

⁵ A Connecticut native who was a member of the 1787 Constitutional Convention. He was one of the original drafters of the constitution's first draft. He was one of Connecticut's first two senators to the United States, where he chaired the committee that organized the federal judiciary.

Even if one or more of these connections exist, the court still may decline to hear the matter on *forum non-conveniens* grounds. This act is not intended to repeal or otherwise affect the doctrine of *forum non-conveniens*.

These requirements are intended to limit the jurisdiction of Connecticut courts to the constitutionally permissible standard of minimum contacts. Cases that have absolutely no connection with Connecticut should not be heard in Connecticut.

For these reasons, the Connecticut Bar Association's Section of International Law requests the Judiciary Committee **favorably report Senate Bill 1088**.

I would be happy to answer any questions from members of the committee.